

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

INVENTORS: Oppermann *et al.*

Assignee: Stryker Corporation

APPLICATION NO.: 09/754,831

PATENT NO.: 7,078,221

FILING DATE.: January 3, 2001

ISSUE DATE: July 18, 2006

TITLE: Nucleic Acid Molecules Encoding Osteogenic Proteins

ATTN: Certificate of Correction Branch  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR CERTIFICATE OF CORRECTION UNDER**  
**35 U.S.C. § 255 AND 37 C.F.R. § 1.323**

Sir:

The Assignee of record of the above-identified patent, Stryker Corporation, by virtue of an assignment recorded in the U.S. Patent and Trademark Office (USPTO) on January 22, 2008, at Reel No. 020403, Frame No. 0795; an assignment recorded on January 22, 2008, at Reel No. 020403, Frame No. 0781; and an assignment recorded on January 22, 2008, at Reel No. 020403, Frame No. 0248 hereby requests that a Certificate of Correction be issued for U.S. Patent No. 7,078,221 pursuant to 35 U.S.C. § 255 and 37 C.F.R. § 1.323.

The Assignee respectfully requests that the correction to the "Related U.S. Application Data" section appearing on the front page of U.S. Patent No. 7,078,221 and the correction to the "Cross-Reference to Related Applications" section of the specification, both of which appear on the enclosed Certificate of Correction, issue.

More specifically, as issued, the "Related U.S. Application Data" section reads as follows:

Continuation of application No. 08/375,901, filed on Jan. 20, 1995, now Pat. No. 6,261,835, which is a division of application No. 08/145,812, filed on Nov. 1, 1993, now Pat. No. 5,750,651, which is a division of application No. 07/995,345, filed on Dec. 22, 1992, now Pat. No. 5,258,494, which is a division of application No. 07/315,342, filed on Feb. 23, 1989, now Pat. No. 5,011,691, which

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is a continuation-in-part of application No. 07/232,630, filed on Aug. 15, 1988, now abandoned, which is a continuation-in-part of application No. 07/179,406, filed on Apr. 8, 1988, now Pat. No. 4,968,590.

As corrected on the accompanying Certificate of Correction, the “Related U.S. Application Data” section should read as follows:

Continuation of application No. 08/375,901, filed on Jan. 20, 1995, now Pat. No. 6,261,835, which is a division of application No. 08/145,812, filed on Nov. 1, 1993, now Pat. No. 5,750,651, which is a division of application No. 07/995,345, filed on Dec. 22, 1992, now Pat. No. 5,258,494, which is a continuation of application No. 07/621,988, filed on Dec. 4, 1990, now abandoned, which is a division of application No. 07/315,342, filed on Feb. 23, 1989, now Pat. No. 5,011,691, which is a continuation-in-part of application No. 07/232,630, filed on Aug. 15, 1988, now abandoned, which is a continuation-in-part of application No. 07/179,406, filed on Apr. 8, 1988, now Pat. No. 4,968,590.

In addition, as issued, the “Cross-Reference to Related Applications” section of the specification reads as follows:

“This application is a continuation of U.S. Ser. No. 08/375,901, filed Jan. 20, 1995, now U.S. Pat. No. 6,261,835, which is a divisional of U.S. Ser. No. 08/145,812, filed Nov. 1, 1993, now U.S. Pat. No. 5,750,651, which is a divisional of U.S. Ser. No. 07/995,345, filed Dec. 22, 1992, now U.S. Pat. No. 5,258,494, which is a divisional of U.S. Ser. No. 07/315,342, filed Feb. 23, 1989, now U.S. Pat. No. 5,011,691, which is a continuation-in-part of U.S. Ser. No. 07/232,630, filed Aug. 15, 1988, now abandoned, which is a continuation-in-part of U.S. Ser. No. 07/179,406, filed Apr. 8, 1988, now U.S. Pat. No. 4,968,590, the disclosures of all of which are incorporated herein by reference.

As corrected on the accompanying Certificate of Correction, the “Cross-Reference to Related Applications” section of the specification should read as follows:

“This application is a continuation of U.S. Ser. No. 08/375,901, filed Jan. 20, 1995, now U.S. Pat. No. 6,261,835, which is a divisional of U.S. Ser. No. 08/145,812, filed Nov. 1, 1993, now U.S. Pat. No. 5,750,651, which is a divisional of U.S. Ser. No. 07/995,345, filed Dec. 22, 1992, now U.S. Pat. No. 5,258,494,

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which is a continuation of U.S. Ser. No. 07/621,988, filed Dec. 4, 1990, now abandoned, which is a divisional of U.S. Ser. No. 07/315,342, filed Feb. 23, 1989, now U.S. Pat. No. 5,011,691, which is a continuation-in-part of U.S. Ser. No. 07/232,630, filed Aug. 15, 1988, now abandoned, which is a continuation-in-part of U.S. Ser. No. 07/179,406, filed Apr. 8, 1988, now U.S. Pat. No. 4,968,590, the disclosures of all of which are incorporated herein by reference.”

Applicants submit that Applicants erred by failing to provide the complete related U.S. application data as required by 37 C.F.R. § 1.78(a) and 35 U.S.C. § 120. Applicants submit that Applicants’ inadvertent and unintentional omission of the reference to U.S. Application No. 07/621,988 occurred in good faith and was a clerical error or mistake of a minor nature that does not constitute new matter or require reexamination as the earliest effective priority date for the instant patent has not changed.

Because these corrections are necessitated by Assignee’s error, Assignee has authorized charging the \$100.00 fee required under 37 C.F.R. §§ 1.323 and 1.20(a) for issuing a Certificate of Correction to Deposit Account No. 50-1721 at the time of filing this Request via EFS-Web.

Further, because the instant patent issue from an application filed after November 29, 2000, Applicants submit that a Certificate of Correction is the appropriate method for correcting errors in 35 U.S.C. § 120 priority claim for this patent because (See MPEP § 1485):

(A) all requirements set forth in 37 CFR 1.78(a)(1) have been met in the application which became the patent to be corrected;

(B) it is clear from the record of the patent and the parent application(s) that priority is appropriate; and

(C) a grantable petition to accept an unintentionally delayed claim for the benefit of a prior application has been filed, including a surcharge as set forth in 37 CFR 1.17(t), as required by 37 CFR 1.78(a)(3).

With respect to Requirement (A), Assignee submits that all requirements of 37 C.F.R. 1.78(a)(1) have been met with respect to the instant patent which is to be corrected. In particular, with respect 37 C.F.R. § 1.78(a)(1), this patent names as inventors and claims the inventions of Hermann Oppermann, Thangavel Kuberanpath, David Rueger, and Engin Ozkaynak. These

four inventors are also named in each of applications 07/315,342, 07/621,988, 07/995,345, 08/145,812, and 08/375,901 to which the instant application claims priority. Further, with respect to 37 C.F.R. § 1.78(a)(1)(ii), this patent received a filing date of January 13, 2001, and the basic filing fee was paid on September 10, 2001, which was during the pendency of the application.

With respect to Requirement (B), Assignee submits that it is clear from the record that claiming priority to U.S. Application No. 07/621,988 is appropriate. U.S. Application No. 07/621,988, which was unintentionally omitted from the priority claim, was abandoned in favor of U.S. Application No. 07/995,345 as U.S. Application No. 07/995,345 was a file wrapper continuation of 07/621,988. This is evidenced by the bibliographic data for U.S. Application No. 07/621,988, available in PAIR, a printout of which is attached as "Exhibit A" which states that the status of U.S. Application No. 07/621,988 is a "file-wrapper continuation parent application." Further, the continuity data for U.S. Application No. 07/995,345, available in PAIR, a printout of which is attached as "Exhibit B," states that U.S. Application No. 07/995,345 is a continuation of U.S. Application No. 07/621,988. Further, as a file wrapper-continuation parent application, U.S. Application No. 07/621,988, was pending at the time U.S. Application No. 07/995,345 was filed. Accordingly, the record indicates that U.S. Application No. 07/995,345 should claim priority to U.S. Application No. 07/621,988 and that the claim to U.S. Application No. 07/621,988 is appropriate.

With respect to Requirement (C), Assignee has submitted concurrently with this request a petition to accept an unintentionally delayed priority claim under 35 U.S.C. § 120, including the surcharge as set forth in 37 CFR § 1.17(t), as required by 37 CFR 1.78(a)(3). Assignee requests that once the petition is granted, the Certificate of Correction issue.

For all these reasons, Assignee respectfully requests that a Certificate of Correction correcting the errors listed on the attached Certificate of Correction and described in this request issue.

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Submitted November 4, 2008  
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Attorney Docket No.: STK-008CN  
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The Examiner is invited to call the undersigned attorney with any questions concerning submission of this paper.

Respectfully submitted,

Date: November 4, 2008  
Limited Recognition No.: L0363

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BOS-1249862 v1

**EXHIBIT A**10-07-  
2008::17:49:41

★ 07/621,988 OSTEOPGENIC PROTEINS

**Bibliographic Data**

Application Number:	07/621,988	Customer Number:	-
Filing or 371 (c) Date:	12-04-1990	Status:	Abandoned -- File-Wrapper-Continuation Parent Application
Application Type:	Utility	Status Date:	01-15-1993
Examiner Name:	NUTTER, NATHAN M	Location:	-
Group Art Unit:	1503	Location Date:	03-16-1993
Confirmation Number:	4207	Earliest Publication No:	-
Attorney Docket Number:	CRP-001CP2DV	Earliest Publication Date:	-
Class / Subclass:	530/326	Patent Number:	-
First Named Inventor:	HERMANN OPPERMANN , MEDWAY, MA (US)	Issue Date of Patent:	-

Title of Invention: OSTEOPGENIC PROTEINS

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07/995,345

## OSTEOGENIC PROTEINS

10-14-  
2008::11:03:40**Parent Continuity Data**

Description	Parent Number	Parent Filing or 371(c) Date	Parent Status	Patent Number
This application is a Continuation of	07/621,988	12-04-1990	Abandoned	-
is a Division of	07/315,342	02-23-1989	Patented	5,011,691
Is a Continuation-in-part of	07/232,630	08-15-1988	Pending	-
is a Continuation-in-part of	07/179,406	04-08-1988	Patented	4,968,590

**Child Continuity Data**

08/376,731 filed on 01-20-1995 which is Patented claims the benefit of 07/995,345  
 08/375,901 filed on 01-20-1995 which is Patented claims the benefit of 07/995,345  
 08/145,812 filed on 11-01-1993 which is Patented claims the benefit of 07/995,345  
 08/417,071 filed on 04-04-1995 which is Patented claims the benefit of 07/995,345  
 09/074,299 filed on 05-07-1998 which is Patented claims the benefit of 07/995,345  
 11/331,855 filed on 01-13-2006 which is Patented claims the benefit of 07/995,345  
 08/449,699 filed on 05-24-1995 which is Patented claims the benefit of 07/995,345  
 08/920,030 filed on 08-26-1997 which is Abandoned claims the benefit of 07/995,345  
 09/073,080 filed on 05-05-1998 which is Abandoned claims the benefit of 07/995,345  
 09/754,831 filed on 01-03-2001 which is Patented claims the benefit of 07/995,345  
 09/956,582 filed on 09-19-2001 which is Abandoned claims the benefit of 07/995,345  
 10/671,317 filed on 09-25-2003 which is Abandoned claims the benefit of 07/995,345  
 08/957,425 filed on 10-24-1997 which is Patented claims the benefit of 07/995,345  
 10/335,965 filed on 01-02-2003 which is Abandoned claims the benefit of 07/995,345  
 12/195,617 filed on null which is Pending claims the benefit of 07/995,345

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CERTIFICATE OF CORRECTION

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PATENT NO.: 7,078,221  
APPLICATION NO.: 09/754,831  
ISSUE DATE: July 18, 2006  
INVENTOR(S): Oppermann *et al.*

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the front page of the patent, under the heading Related U.S. Application Data, delete the paragraph beginning with "Continuation of application No. 08/375,901" through to and ending with "now Pat. No. 4,968,590" and replace it with the following paragraph:

--Continuation of application No. 08/375,901, filed on Jan. 20, 1995, now Pat. No. 6,261,835, which is a division of application No. 08/145,812, filed Nov. 1, 1993, now Pat. No. 5,750,651, which is a division of application No. 07/995,345, filed Dec. 22, 1992, now Pat. No. 5,258,494, which is a continuation of application No. 07/621,988, filed Dec. 4, 1990, now abandoned, which is a division of application No. 07/315,342, filed Feb. 23, 1989, now Pat. No. 5,011,691, which is a continuation-in-part of application No. 07/232,630, filed Aug. 15, 1988, now abandoned, which is a continuation-in-part of application No. 07/179,406, filed Apr. 8, 1988, now Pat. No. 4,968,590.--

At col. 1, line 12, after the phrase "No. 5,258,494," please insert the following:

--which is a continuation of U.S. Ser. No. 07/621,988, filed Dec. 4, 1990, now abandoned,--

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